

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Charlottesville Division**

<b>JASON KESSLER,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action No. 3:17-cv-56</b>
	)	
<b>CITY OF CHARLOTTESVILLE,</b>	)	
<b>MAURICE JONES,</b>	)	
	)	
<b>Defendants.</b>	)	

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* MEMORANDUM OF LAW**

COME NOW John Kluge, Alight Fund LLC, David Posner, and Hunter Smith (the “Movants”), by counsel, and hereby respectfully move this Court for leave to participate in the above-styled action as *amici curiae* and to file the accompanying amicus brief. In support of this motion, the Movants state as follows:

**I. DISTRICT COURTS HAVE AUTHORITY TO ACCEPT AMICUS BRIEFS.**

Federal district courts possess the inherent authority to accept amicus briefs. *In re Bayshore Ford Truck Sales, Inc.*, 471 F.3d 1233, 1249 n.34 (11th Cir. 2006) (“[D]istrict courts possess the inherent authority to appoint ‘friends of the court’ to assist in their proceedings.”); *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (2d Cir. 1982); *United States ex rel. Gudur v. Deloitte Consulting Llp*, 512 F. Supp. 2d 920, 927 (S.D. Tex. 2007) (“The extent to which the court permits or denies amicus briefing lies solely within the court’s discretion.”). “No statute, rule, or controlling case defines a federal district court’s power to grant or deny leave to file an amicus brief, . . . and in the absence of controlling authority, district courts commonly refer to [Federal Rule of Appellate Procedure] 29 for guidance.” *Gudur*, 512 F. Supp. 2d at 927. “Factors relevant to the

determination of whether amicus briefing should be allowed include whether the proffered information is ‘timely and useful’ or otherwise necessary to the administration of justice.” *Id.* *Amici’s* role is to assist the court “in cases of general public interest by making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision.” *N.A.A.C.P. v. Town of Harrison*, 940 F.2d 792, 808 (3d Cir. 1991). This authority supports the Court’s exercise of its discretion to accept this *amici* brief.

## **II. INTEREST OF THE MOVANTS.**

Each of the *amici curiae* does business and has his principal offices in the City of Charlottesville, Virginia. Alight Fund LLC and John Kluge, its co-founder and managing partner, have their principal office at 123 East Main Street. David Posner is a downtown entrepreneur with his principal office at 600 East Water Street. Hunter Smith is the owner of Champion Brewing and co-owner of Brasserie Saison, with principal offices at 324 6th Street SE and 111 E Main Street respectively. The *amici curiae* are paying counsel for the preparation and submission of this brief. No other person or entity contributed money that was intended to fund the preparation or submission of this brief. This brief was prepared entirely by counsel for the *amici curiae*.

## **III. MOVANTS’ BRIEF IS TIMELY AND USEFUL TO THE DISPOSITION OF THE ISSUES BEFORE THE COURT.**

Movants have submitted their *amici curiae* brief along with this motion. The issues presented before this Court are complex matters of constitutional law. The decision of the Court in this matter will impact each of the movants and others similarly situated, whose places of business are in downtown Charlottesville and whose clients and customers must come into the downtown in order to conduct business and/or patronize movants’ businesses. Allowing the

subject demonstration to take place at Emancipation Park threatens the security of movants, their customers, clients and the property on their businesses are located. Movants believe it is important for the Court to hear from some of the citizens who will be impacted by its decision in this matter in order to understand the full range of ramifications its decision may have.

WHEREFORE, Movants John Kluge, Alight Fund LLC, David Posner, and Hunter Smith respectfully request that this Court grant this motion, allow them to participate as *amici curiae*, and accept for filing the amici curiae brief submitted with this motion.

Respectfully submitted,  
JOHN KLUGE  
ALIGHT FUND LLC  
DAVID POSNER  
HUNTER SMITH  
By Counsel

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### **CERTIFICATE OF SERVICE**

I hereby certify that on August 11, 2017, I filed the foregoing via CM/ECF, which caused a notification of electronic filing (NEF) to be sent to the following counsel of record:

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